

## REMARKS

The office action seems to note that while what is claimed is that tags be appended to transmissions, the cited reference simply uses different frequencies. Surely the applicant could easily address the obviousness of this difference.

But the applicant is not required to address obviousness in response to a Section 102 rejection. The argument that “the Examiner views the teaching of each controller transmitting on a different frequency as being equivalent to appending tags and the teaching of the console determining which controller is sending which control signals as being equivalent to the media player distinguishing game control commands from different players” is an inappropriate and insufficient argument under Section 102. See *Richardson vs. Suzuki Motor Co., Ltd.*, 9 U.S.P.Q.2d 1913 (Fed. Cir. 1989) (“The jury had erroneously been instructed that anticipation may be shown by equivalence, a legal theory that is pertinent to obviousness under Section 103, not anticipation under Section 102.”)

With respect to the argument under 37 C.F.R. 1.111(b), plainly, the applicant has pointed out how the reference is different. The Examiner has responded by arguing that, even if different, because they are equivalent, they are anticipated. This is clearly incorrect as a matter of law.

Therefore, the final rejection should be withdrawn.

Respectfully submitted,

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